
Legal Dynamics of EU External Relations

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Legal Dynamics of EU External Relations

Dissecting a Layered Global Player

Second Edition

 Springer

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Preface to the Second Edition

Harold Wilson famously remarked that a week is a long time in politics. Law would seem to be different, in that developments dating back several years can still be easily tagged as ‘recent’ by *la doctrine*. Nevertheless, even in the legal realm, the passing of half a decade will normally entail a vast series of events producing considerable upheavals; and undeniably, in the field of EU external relations law, a lot has happened since the first publication of *Layered Global Player* in 2011. In particular, the arrival of new judgments, policy developments and scholarly publications called with ever greater urgency for a thorough updating, adjusting and revising.

Accumulated experiences in teaching have, moreover, prompted a slight repositioning of this volume, and a measured modification of its outward appearance. With the kind support of the publisher, it is now consciously styled and marketed as an academic textbook rather than a scholarly monograph (a conversion that has helped to slightly bring down its price tag, too). Content-wise, the changes will be equally noticeable in the inclusion of chapter overviews, clarifying boxes and supplementary examples. A careful combing through of the previous manuscript has sought to ensure that the accessibility of the discussions and analyses is not compromised, but instead further enhanced where possible.

The temptation to expand the number of chapters was actively resisted. While seemingly justifiable for some domains in light of their topicality (e.g., the Area of Freedom, Security and Justice), the focus continues to lie on what is arguably the ‘general part’ of this sub-domain of EU institutional law. As before, the intention is to offer an advanced introduction; in this regard Goethe’s famous line, *in der Beschränkung zeigt sich erst der Meister*, nails it perfectly. Once the fundamentals are mastered, proficient readers should be able to explore and establish for themselves how the main rules and principles (may be expected to) apply in specific or adjacent fields.

A brief remark is in order with regard to the refurbished titles that grace the cover. Without intending to shift the blame—after all, it does take two to tango—this eye-catching alteration was carried out on the request of the managing editor at Springer, notwithstanding some personal heartache and hesitation. While I remain of the opinion that the previous setup only carried a minimal risk of confusion, the argument gradually won me over that a subtle reversal would make the book easier

to spot and trace. While it was definitely not the most compelling reason, the switch might assist in further boosting the sales record as well.

A quick note on terminology: the reader will find that in the pages that follow, the abbreviation ‘ECJ’ is maintained—not only because this major branch has been most influential in shaping the law but also because to my mind, it is often simply erroneous to refer to the ‘CJEU’. After all, since the entry into force of the Lisbon Treaty, the latter designation refers to the institution as a whole—no more and no less. For clarity’s sake, the General Court is distinguished and separately mentioned whenever its specific case law is envisaged. In contrast, the term ‘CJEU’ is used sparingly, with the exclusive intention to indicate the overarching structure.

In the preparation of this edition, I have greatly benefited from comments and suggestions supplied by countless colleagues. To this list may be appended several cohorts of obliging students, both in Nijmegen and Antwerp. As usual however, they must all be exonerated from any possible errors or inaccuracies; obviously, the final responsibility for the text is mine and mine alone.

On that thread, it *almost* goes without saying that I continuously look forward to receiving feedback from my readership—undergraduates, postgraduates, fellow scholars, possibly even practitioners—on any positive or negative aspect of this book.

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April 2017

Henri de Waele

Preface to the First Edition

At the present day and time, a course on the external relations law of the European Union adorns the teaching catalogue of nearly every self-respecting academic institution. Also, the number of universities that offer MA and LLM programmes in EU law and European studies continues to grow. Unfortunately, in many of these courses and programmes, students take part that only possess rudimentary knowledge of the Union's rules and structures. Either they never took more advanced courses (precisely their reason for enrolling in an MA or LLM programme), or they have come to forget the finer points of the subject matter after having passed the relevant exams in a distant past. When one is subsequently exposed to the complex set of norms and principles that govern the Union's external action, the deficiencies make themselves felt most painfully.

In recent years, a great number of studies have been published on the international relations law of the EU. Yet, these books tend to be very heavy going, even for graduate students. They contain invaluable research output and are extremely useful as reference works, but often intend to be nothing else. Occasional chapters from these works find a deserved place in course readers, and render the latter more weighty in every sense of the term.

Nowadays, almost every general EU law handbook contains a dedicated section on the subject area, yet the authors invariably tend to be succinct in their treatment. Moreover, it appears as if the need to restrict the size of the overall volume, understandable as it may be, has induced many of them to let brevity triumph over clarity.

To the mind of the present author, there exists an evident need for a compact study: a treatise that explains the basic legal notions underpinning the EU's international relations, while simultaneously covering the full breadth of its external policies. Such a volume would occupy a middle ground, somewhere between the available reference works, which require a bit too much prior knowledge, and the general handbooks, which are slightly too superficial in their treatment. It would form an ideal backbone to a course at Master's level: after perusing the relevant paragraphs, students are well prepared to immerse themselves more fully in topics during class, and better able to tackle the primary sources on their own.

In all then, the present monograph does not purport to be encyclopaedic, but means to offer a solid introduction to the Union's external relations law. It focuses

on the general concepts of the field and the central principles of the different policies. Once students have grasped the fundamentals, they may proceed to consult more specialist books and articles on subjects of specific interest. Having said this, seasoned scholars might still take a casual interest in this volume and be intrigued by the (occasionally deviant) discussion of a particular clause, notion or judgement.

The structure of this book might already strike some readers as odd. To an extent, it has been inspired by academic writings on multi-level governance. Predominantly however, it is premised on the approach taken by Günter Grass in his *Beim Häuten der Zwiebel*. My main idea has been to ‘unpeel’ the Union like an onion, starting with its ‘outer layer’, moving through the middle parts and ultimately arriving at its essence. There are, admittedly, flaws to this metaphor, and the book’s structure is open to criticism. Nevertheless, when it comes to providing clarity, the chosen approach has, at least to the mind of the author, the edge over any other. Unusual as the structure may be, it should still prove efficacious, enabling readers to separate the wood from the trees more adequately, while at the same time doing justice to the multi-faceted dimension of this gripping field of law. Nevertheless, I do look forward to receiving feedback from my readership, fellow scholars, students, possibly even practitioners, on any positive or negative aspect of this work.

Finally, one short remark as regards gender neutrality. Throughout the book, when referring to the Union’s top offices, the male form is employed. Readers are however urged not to take any offence, as this choice was made for reasons of convenience only. By no means does it intend to suggest that the incumbents cannot be female. Indeed, it actually fell to a woman to take up office as the very first High Representative for the Union’s Foreign and Security Policy. If it had not seemed arrogant or silly, this book would have been dedicated to her.

Nijmegen/Antwerp
April 2011

Henri de Waele

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Abbreviations

AA	Association agreement
ACP	African, Caribbean and Pacific countries
ACTA	Anti-Counterfeiting Trade Agreement
AFSJ	Area of freedom, security and justice
ASEAN	Association of South East Asian Nations
ASEM	Asia-Europe Meeting
BSP	Biosafety Protocol
Bull.	Bulletin of the European Communities/European Union
C	Communications series of the Official Journal
CCP	Common Commercial Policy
CCT	Common Customs Tariff
CETA	Comprehensive Economic and Trade Agreement
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CHG	Civilian Headline Goal
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CIVCOM	Committee for Civilian Aspects of Crisis Management
CMPD	Crisis Management and Planning Directorate
COPS	<i>Comité politique et de sécurité</i>
COREPER	<i>Comité des représentants permanents</i>
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
CT	Treaty establishing a Constitution for Europe
DCI	Development Co-operation Instrument
DDA	Doha Development Agenda
DEVCO	Development and Cooperation—EuropeAid
DG	Director General/Directorate General
DSB	Dispute Settlement Body of the WTO
DSU	Dispute Settlement Understanding of the WTO
EAEC	European Atomic Energy Community
EAP	Environmental Action Programme
EaP	Eastern Partnership

EC	European Community/European Communities
ECHO	European Commission Humanitarian Aid Office
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EDA	European Defence Agency
EDCP	EU Development Co-operation Policy
EDEM	European Defence Equipment Market
EDF	European Development Fund
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EEP	External Environmental Policy
EFTA	European Free Trade Association
EHAI	European Humanitarian Aid Instrument
EHRP	External Human Rights Policy
EIDHR	European Instrument for Democracy and Human Rights
EMUNI	Euro-Mediterranean University
ENP	European Neighbourhood Policy
ESDC	European Security and Defence College
ESDP	European Security and Defence Policy
ESS	European Security Strategy
ETS	Emissions Trading System
EU	European Union
EUGS	EU Global Strategy
EUISS	EU Institute for Security Studies
EUMC	EU Military Committee
EUMS	EU Military Staff
EUSC	EU Satellite Centre
EUSRs	EU Special Representatives
EUSS	EU Security Strategy
FAC	Foreign Affairs Council
FAO	Food and Agriculture Organization
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Court
GSP	Generalised System of Preferences
HHG	Helsinki Headline Goal
HR	High Representative of the EU for Foreign Affairs and Security Policy
HRC	Human Rights Council of the United Nations
ICAO	International Civil Aviation Organization

ICJ	International Court of Justice
ILO	International Labour Organization
IMF	International Monetary Fund
INTCEN	EU Intelligence and Situation Centre
IO	International organisation
ITLOS	International Tribunal for the Law of the Sea
JHA	Justice and Home Affairs
L	Legislation series of the Official Journal
MDG	Millennium Development Goals
MEP	Member of the European Parliament
MFN	Most Favoured Nation
MPCC	Military Planning and Conduct Capability
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OCCAR	<i>Organisation conjointe de coopération en matière d'armement</i>
OCT	Overseas Countries and Territories
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OSCE	Organisation for Security and Co-operation in Europe
PCA	Partnership and Co-operation Agreement
PMG	Politico-Military Group
PNR	Passenger Name Records
POLARM	Council Working Party on a European Armaments Policy
PSC	Political and Security Committee
QMV	Qualified majority voting
SDG	Sustainable Development Goals
SEA	Single European Act
SPS	(Agreement on the application of) Sanitary and Phytosanitary Measures
TBR	Trade Barriers Regulation
TBT	(Agreement on) Technical Barriers to Trade
TEAEC	Treaty establishing the European Atomic Energy Community
TEC	Treaty establishing the European Community
TECSC	Treaty establishing the European Coal and Steel Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFTP	Terrorist Finance Tracking Programme
TPC	Trade Policy Committee
TRIPs	(Agreement on) Trade Related Aspects of Intellectual Property Rights
UCC	Union Customs Code
UfM	Union for the Mediterranean
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties
WEAG	Western European Armaments Group
WEAO	Western European Armaments Organisation
WEU	Western European Union
WHO	World Health Organization
WTO	World Trade Organization